IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.29 OF 1999

The Jt.Commissioner of
Income Tax Spl. R-2, Aurangabad ...Appellant.

V/s.

Vinayak Sahakari Sakhar
Karkhana Ltd.
Vinayaknagar Taluka Vaijapur
Dist. Aurangabad ...Respondents.

Dr.P.Daniel for the Appellant.
Mr.S.N.Inamdar for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 4th July, 2005.

ORAL JUDGMENT : (Per J.H.Bhatia, J.)

1. In this Appeal under section 260A of the Income Tax Act , the Appellant has assailed the order passed by the Income Tax Appellate Tribunal in Appeal No.913/PN/1997 and 914/PN/1997 for the assessment years 1990-91 and 1991-92. The following substantial question of law has arisen in the said Appeal.

> "Whether on the facts and in the circumstances of the case, the tribunal was right in holding that

> if the "College Fund" collected (together with the education fund or independently) is at the instance of sugar control order then the addition on account of college fund cannot be sustained being a nontrading receipt as held by the Special Bench in the case of Shri Chhatrapati S.S.K.Ltd. (198 ITR 78 AT)"

2. Heard the learned counsels for both the sides. Perused the record. It may be stated that for the assessment year 1990-91, deductions received by the Respondent Society as contribution to the Education Fund were directed to be deleted by the Tribunal, holding that such contribution is not an income as it is recovered under section 68 of the Maharashtra Co-operative Societies Act and this point is covered by decision of the Bombay High Court in Krishna Sahakari Sakhar Karkhana Ltd. in Income Tax Reference No.61/98 dated 17/7/97. In view of the legal position to the extent of Education Fund settled by the Division Bench of this Court,

no question remains to be decided on that count.

3. About the assessment year 1990-91, the Society had collected certain amount towards the College Fund. The Tribunal has remanded the matter to the Assessment Officer with the direction to find out whether the aforesaid amount was deducted at the instance of Sugar Controller. If yes, issue be covered in favour of the Assessee, by the decision of the Special Bench of the Tribunal in the case of Shri Chhatrapati Sahakari Sakhar Karkhana Ltd. and in absence of any direction of Sugar Controller, the Assessment Officer shall be at liberty to decide the matter in accordance with law. Contribution to the College Fund is not covered by any authority of this Court or the Supreme Court. The direction given by the Tribunal was proper.

4. Infact, the substantial question of law raised as above, was not properly drafted. The Education Fund is specifically covered by Section 68 of the Maharashtra Co-operative

Societies Act as it is deducted as per the directions of the Sugar Controller. But in absence of such direction about the College Fund, it is not known for what purpose and by whom, the said Fund is used. Therefore, two separate questions should have been raised.

5. Any how, in view of the aforesaid facts, we hold that the Tribunal was right and justified in holding that the Education Fund is liable to be deducted and the Tribunal was also justified in remanding the matter to the extent of College Fund to the Assessment Officer.

6. The Appeal stands dismissed, accordingly.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)